

proposing to *make* or to *buy* those categorized as *can either make or buy*. The reasons must include the consideration given to the evaluation factors described in the solicitation and be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(5) Designation of the plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(6) Identification of proposed subcontractors, if known, and their location and size status (see also subpart 19.7 for subcontracting plan requirements).

(7) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(8) Any other information the contracting officer requires in order to evaluate the program.

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 48260, Sept. 18, 1995]

#### **15.706 Evaluation, negotiation, and agreement.**

(a) Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award. When the program is to be incorporated in the contract (see 15.707) and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215-21, Changes or Additions to Make-or-Buy Program.

(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small business specialist. The proposed program shall also be made available to the Small Business Administration representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2) consenting to a change in a make-or-buy program already incorporated in a contract.

(c) The contractor has the basic responsibility for make-or-buy decisions. Therefore, its recommendations should be accepted unless they are inconsistent with Government interests or policy.

(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, de-

livery, and performance, including technical or financial risk involved. The evaluation of *must make* and *must buy* items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the Government's interests shall also be considered:

(1) Whether the contractor has justified performing work in plant that differs significantly from its normal operations.

(2) Whether the contractor's recommended program requires Government investment in new or other facilities in order for the contractor to perform the work in plant. (This additional cost to the Government would not be reflected in the contract price.)

(3) The impact of the contractor's projected plant work loading on indirect costs.

(4) The contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or women-owned small business concerns.

(5) The projected location of any required additional facilities in or near labor surplus areas.

(6) The contractor's make-or-buy history regarding the type of item concerned.

(7) The scope and type of proposed subcontracts including the type and level of technical effort involved.

(8) Other factors such as future requirements, engineering, tooling, starting load costs, market conditions, technical superiority, and the availability of personnel and materials.

(e) Contracting officers shall not normally agree to proposed *make items* when the products or services are (1) not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices or when they are (2) regularly manufactured or provided by the contractor, but available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. However, the contracting officer may agree to these as *make items* if their categorization as *buy items* would increase the Government's overall cost for the contract or acquisition program.

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 52790, Dec. 21, 1990; 60 FR 48260, Sept. 18, 1995]

#### **15.707 Incorporating make-or-buy programs in contracts.**

(a) After agreement is reached, the contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if (i) the contract is a cost-reimbursable contract, or

a cost-sharing contract in which the contractor's share of the cost is less than 25 percent, and (ii) the contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

(b) It may be necessary to incorporate some items of significant value in the make-or-buy program as *make* or, alternatively, as *buy* even though the opposite categorization would result in greater economy for the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215-21, Changes or Additions to Make-or-Buy Program (see 15.708 below). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

#### **15.708 Contract clause.**

The contracting officer shall insert the clause at 52.215-21, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract. If a less economical *make* or *buy* categorization is selected for one or more items of significant value, the contracting officer shall use the clause with (a) its Alternate I, if a fixed-price incentive contract is contemplated, or (b) its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

### **Subpart 15.8—Price Negotiation**

#### **15.800 Scope of subpart.**

This subpart prescribes the cost and price negotiation policies and procedures applicable to initial and revised pricing of (a) negotiated prime contracts (including subcontract pricing under them when required) and (b) contract modifications (including modifications to contracts awarded by sealed bidding).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### **15.801 Definitions.**

*Commercial item* is defined in 2.101.

*Cost analysis* means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data or information other than cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

*Cost or pricing data* means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.804-4. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

- (a) Vendor quotations;
- (b) Nonrecurring costs;
- (c) Information on changes in production methods and in production or purchasing volume;
- (d) Data supporting projections of business prospects and objectives and related operations costs;
- (e) Unit-cost trends such as those associated with labor efficiency;
- (f) Make-or-buy decisions;
- (g) Estimated resources to attain business goals; and
- (h) Information on management decisions that could have a significant bearing on costs.

*Cost realism* means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal.

*Field pricing support* means a review and evaluation of the contractor's or subcontractor's proposal by any or all field pricing support personnel (see 15.805-5(a)(2)).

*Forward pricing rate agreement* means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. Such rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

*Forward pricing rate recommendation* means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or